

The Examiner correctly notes that Berkowitz et al. discloses a bread comprising flour, water, vegetable shortening, glycerol, yeast, sugar, salt, potassium sorbate, and cream flavor with an  $A_w$  within the range of 0.70 to 0.95, having an enhanced shelf-life via reduction of interpackage oxygen concentration. However, a central aspect of obtaining enhanced shelf-life in Berkowitz et al. is due to the presence of a sucrose ester emulsifier and a synthetic hydrocolloid salt of polyvinylpyrrolidone (PVP). As noted in Berkowitz et al., "a sucrose ester emulsifier, and a synthetic hydrocolloid salt of polyvinylpyrrolidone . . . are incorporated in a conventional bread dough. By employing these additives in the proper proportions to one another and in the proper amounts by weight to the remaining constituents of a bread dough, potentially hazardous microorganisms are inhibited by controlling the water activity ( $A_w$ ) to maintain such activity in the range below 0.95 and preferably below 0.91." Berkowitz et al., Column 2, lines 15-24. Claim 1, as amended, recites a flatbread product made from a formulation including glycerin and corn syrup. Berkowitz et al. does not teach or suggest the combination of glycerol and corn syrup as required by claims 1-14.

Rudel discloses a high protein-content bread product which may include high-heat non-fat dry milk to enhance protein levels of the composition. The bread in Rudel also contains a nutritive carbohydrate sweetener, which may include corn syrup. However, Rudel does not suggest any functionality with respect to the addition of corn syrup beyond that of a "sweetening agent." Moreover, Rudel does not teach or suggest the use of glycerin or the combination of glycerine and corn syrup for any purpose, much less the purpose of extending shelf-life of the product.

The Federal Circuit has stated that it is necessary, in order to support a rejection of claims under §103(a) using a combination of references, that there be a teaching or suggestion in one or more of the cited references to combine the elements of the claimed invention. *In re Dow Chemical Co.*, 5 U.S.P.Q.2d 1529 at 1531-32 (Fed.Cir. 1988); *ACS Hospital Systems, Inc. v. Montefiore Hospital et al.*, 221 U.S.P.Q. 929 at 933 (Fed.Cir. 1984); *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 220 U.S.P.Q. 303 at 311 (Fed.Cir. 1983). The mere fact that the prior art can be modified does not make the modification obvious, unless the prior art taught or suggested the desirability of the modification. *In re Gordon*, 221 USPQ 1125 (Fed.

Cir. 1984). Therefore, since neither the Berkowitz et al. nor the Rudel reference teaches or suggests the use of a combination of glycerine and corn syrup as a means of lowering water activity to increase the shelf-life of a flatbread product as required by claims 1-14, a rejection of amended claims 1-14 under §103(a) is improper.

The Examiner indicated that the limitation “without the use of antifogging agents or pyrrolyidone-containing additives” does not define over Berkowitz et al because they do not include antifogging agents and the claims recites the alternative of one or the other.” As noted above, Applicants believe that the original claims excluded **both** additives. In any event, Applicants have amended independent claim 1 to make it clear that both additives are excluded since Berkowitz et al. require pyrrolyidone-containing additives. Thus, this rejection is improper for claims 1-14.

Claims 23-24 also exclude **both** additives since they both use “consisting essentially” language with regard to the flatbread product. The pyrrolyidone-containing additives are an important and essentially component of the Berkowitz et al. product and, therefore, are excluded by the “consisting essentially” language with regard to the flatbread product in claims 23-24. Thus, this rejection is also improper for claims 23-24.

Applicants respectfully request that this rejection be withdrawn.

(2) The Office Action has also rejected Claims 15-23 under 35 U.S.C. §103(a) as being unpatentable over Feldmeier et al. (U.S. Patent 6,048,558) in view of Berkowitz et al. (U.S. Patent 5,059,432).

The primary reference Feldmeier et al. discloses a method of imparting resistance to moisture and texture degradation in baked flour-containing goods packaged as a meal, in the form of a kit prepared for storage at refrigerated conditions. The meal kit may optionally contain other foods in addition to the flour-containing component. Resistance to moisture and texture degradation is achieved by treating at least one compartment of the kit package with an **anti-fogging agent** which prevents staling of the flour-containing component by facilitating the evaporation of moisture which may collect inside the package. As noted in

Feldmeier et al., the anti-fogging agent is an important aspect of the method which allows a relatively long shelf-life. Col. 4, lines 15-29; col. 5 lines 18-32.

The longest shelf life reported in Feldmeier et al. is "at least 60 days."<sup>1</sup> It is noted that when the baked products are "packaged as described herein [i.e., using the anti-fogging agent], longer shelf lives will be obtained to retard staling and off-flavors." Col. 3 lines 36-43. The increase in shelf life due to the anti-fogging agent does not appear to be reported in Feldmeier et al. Clearly, however, removing the anti-fogging agent from the package of the Feldmeier et al. bread product would reduce the shelf life.

Berkowitz et al., as pointed out by the Examiner, discloses a bread comprising of flour, water, vegetable shortening, glycerol, yeast, sugar, salt, potassium sorbate, and cream flavor with a  $A_w$  within the range of 0.70 to 0.95, and enhanced shelf-life via reduction of inter-package oxygen concentration. Significantly, a central aspect of obtaining enhanced shelf-life by the method taught by Berkowitz et al. is due to the presence of a sucrose ester emulsifier and a synthetic hydrocolloid salt of **polyvinylpyrrolidone (PVP)**.

Applicant respectfully submits that this rejection is improper since claims 15-22 specifically exclude both the anti-fogging agent of Feldmeier et al. and the pyrrolidone-containing additives" of Berkowitz et al. Claim 23 also excludes **both** additives since it uses "consisting essentially" language with regard to the flatbread product. One of ordinary skill in the art, in making the combination of references suggested by the Examiner, would have considered at least one of these additives (and probably both of them) necessary. Applicants respectfully request that this rejection be withdrawn.

The Examiner also indicated that the "exclusion of the anti-fogging agent does not define [the present invention] over Feldmeier et al." According to the Examiner,

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1. Elsewhere, Feldmeier et al. notes that using their invention "acceptable taste, texture and appearance properties are maintained in the baked component . . . for extended time periods. For example, these properties are maintained when the packaged product is stored under refrigerated conditions . . . for **several weeks**." Col. 7, lines 61-66 (emphasis added). Thus, it is not clear whether the shelf life of the Feldmeier et al. bread product is "several weeks" or "at least 60 days."

"Feldmeier et al disclose the anti-fogging agent further assists in maintaining freshness and retarding staling. By this disclosure, they recognize that without the anti-fogging agent, the product still has shelf stability but the anti-fogging agent enhances the shelf life. Thus, it would have been obvious to one skilled in the art to exclude the [anti-]fogging agent depending on the cost/benefit factor."

The Examiner goes on to discuss the application of such a "cost/benefit factor" in eliminating the anti-fogging agent of Feldmeier et al.

Applicants respectfully disagree. One of ordinary skill in the art would actually be taught away from the present invention by the Feldmeier et al. disclosure. Resistance to moisture and texture degradation in Feldmeier et al. is achieved by treating at least one compartment of the kit package with an **anti-fogging agent** which prevents staling of the flour-containing component by facilitating the evaporation of moisture which may collect inside the package. As noted in Feldmeier et al., the anti-fogging agent is an important aspect of the method which allows a relatively long shelf-life. Col. 4, lines 15-29; col. 5 lines 18-32.

It is true, as the Examiner points out, that Feldmeier indicates that the anti-fogging agent "further assists in maintaining freshness and retarding staling." But, as noted above, the longest shelf life reported in Feldmeier et al. is "at least 60 days." Specifically, Feldmeier et al. notes that when the baked products are "packaged as described herein [i.e., using the anti-fogging agent], longer shelf lives will be obtained to retard staling and off-flavors." Col. 3 lines 36-43. Elsewhere, Feldmeier et al. notes that using their invention "acceptable taste, texture and appearance properties are maintained in the baked component . . . for extended time periods. For example, these properties are maintained when the packaged product is stored under refrigerated conditions . . . for **several weeks**." Col. 7, lines 61-66 (emphasis added). Thus, it is not clear whether the Feldmeier et al. product has a shelf life of about 60 days or only several weeks. Clearly, however, removing the anti-fogging agent from the package of the Feldmeier et al. bread product would reduce the shelf life. One of ordinary skill in the art, in seeking to provide a shelf stable bread product, would not be motivated to remove the anti-fogging agent since the shelf stability would be decreased. Moreover, one of ordinary skill in the art would not be motivated to remove the anti-fogging agent in order to achieve the

shelf live (i.e., at least 3 months) of the present invention since he or she would realize that doing so would reduce the shelf life to some value below the values reported in Feldmeier et al. (i.e., less than 60 days or less than several weeks depending on one's reading of Feldmeier et al.). Thus, Feldmeier et al. actually **teaches away** from the present invention since it implicitly teaches that omission of the anti-fogging agent will provide a shelf life well below that required by the present claims.

As detailed above, the present invention is not obvious in light of the references cited by the Examiner. Applicants respectively request that this rejection be withdrawn.

(3) The Office Action has also rejected Claims 25 and 26 under 35 U.S.C. §103(a) as being unpatentable over Feldmeier et al. (U.S. Patent 6,048,558) in view of Berkowitz et al. (U.S. Patent 5,059,432).

This rejection is based on the same references as the previous §103(a) rejection and Applicants hereby incorporate the same arguments from the previous rejection. Claims 25 and 26 (as well as claims 23 and 24), also exclude **both** additives since they both use "consisting essentially" language with regard to the flatbread product. The anti-fogging additives are an important and essentially component of the Feldmeier et al. product and, therefore, are excluded by the "consisting essentially" language with regard to the flatbread product in claims 25-26. The pyrrolidone-containing additives are an important and essentially component of the Berkowitz et al. product and, therefore, are excluded by the "consisting essentially" language with regard to the flatbread product in claims 25-26. Thus, this rejection is also improper for claims 25-26. Applicants respectfully request that this rejection be withdrawn.

### **CONCLUSION**

In view of the foregoing amendments and remarks, Applicants respectfully request that the Examiner allow pending claims 1-26, and pass the application to issue.

If the Examiner believes that a telephonic or personal interview would be helpful to terminate any issues which may remain in the prosecution of the

Application, the Examiner is requested to telephone Applicants' attorney at the telephone number set forth herein below.

The Commissioner is hereby authorized to charge any additional fees which may be required in the Application to Deposit Account No. 06-1135.

Respectfully submitted

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